

City of Chattanooga Stormwater Management Enforcement Protocol

National Pollutant Discharge Elimination System Permit Number TNS068063 authorizes the City of Chattanooga to discharge stormwater runoff in accordance with certain water quality management programs and provisions as set forth in the permit. Section II.C.7.b.v. of the permit states, “ *The permittees (Chattanooga) shall develop and put in practice enforcement procedures for the illicit discharges and improper disposal program.*” The permit further states in section II.C.9.e., “*The City shall improve its construction site inspection and enforcement procedures by carrying out the following . . . ii. Setting up clearly defined procedures for enforcing ordinances, permits and control plans.*”

In response to this requirement, the City of Chattanooga passed Ordinance Number 9942 establishing city regulation and enforcement oversight regarding stormwater management. Sections 31-344-346 of Ordinance Number 9942 define the administrative enforcement remedies available to the Stormwater Manager to assure its compliance. These remedies include,

- (a) Notification of Violation;
- (b) Consent Orders;
- (c) Show Cause Hearings;
- (d) Compliance Orders;
- (e) Cease and Desist Orders;
- (f) Unlawful acts, misdemeanor;
- (g) Civil Penalties.

In order to assure fair and just enforcement to all parties involved and to provide adequate guidance to stormwater field personnel, the following protocol shall be employed in enforcement of City Ordinance Number 9942.

1. Land Disturbing Activities Without Obtaining Necessary Land Disturbing Permit

- (a) First Offense (Property Owner and Contractor)—Cease and Desist Order; Notice of Violation; Civil Penalty for Cost of Permit.
- (b) Second Offense (Property Owner and/or Contractor)—Cease and Desist Order, Issuance of Civil Penalty--\$500.00 plus damages consisting of cost of permit and salary costs of enforcement of article.
- (c) Each Additional Offense (Property owner and/or Contractor)—Cease and Desist Order; Issuance of Civil Penalty--\$1,000.00 plus damages plus court citation for Unlawful Acts, Misdemeanor.
- (d) Failure to Properly Transfer Land Disturbing Permit—Issuance of Civil Penalty for the cost of new permit.
- (e) Failure to Request Extension of Permit—Issuance of Civil Penalty for the cost of new permit
- (f) Enforcement under this guidance is contractor and property owner specific, not site specific. For instance, if contractor A receives a Notice of Violation for a first offense, a Civil Penalty is to be issued against Contractor A for the second offense regardless of the property owner or location.

2. Failure to Install, Maintain or Use Proper Construction Entrance (Tracking Mud on Street)

- (a) First Offense—Written Warning Issued to Land Disturbing Permit Applicant. Copies to General Contractor and Property Owner.
- (b) Second Offense—Notice of Violation issued to Land Disturbing Permit Applicant.
- (c) Each Additional Offense--Issuance of Civil Penalty against Land Disturbing Permit Applicant of \$250.00 per day plus salary costs of enforcement of article.

- (d) Failure of the applicant to aggressively remove any mud, debris or construction material that is deposited in a public roadway will lead to an additional civil penalty of \$250.00 per incident plus salary costs of enforcement of article plus three times the cost of the city expenses if city crews are required to remove it to protect the safety of the public.

3. Failure to Install, Maintain or Use Proper Structural Erosion or Sediment Controls (Sediment Discharge)

- (a) First Project Offense—Written Warning issued to Land Disturbing Permit Applicant. Copies to Property Owner if different than applicant. If project is exempt from obtaining a land disturbing permit, written warning is given to the property owner. Issuance of Civil Penalty for cost of damages for city expenses if City crews are required to clean up sediment discharged into City Streets, right-of-way or stormwater structures.
- (b) Second Offense—Notice of Violation issued to Land Disturbing Permit Applicant or Property Owner; Cease and Desist Order until necessary erosion and sedimentation controls are installed or maintained; Compliance Order to Submit Self-Inspection Documentation on Monthly Basis; Permit Exempt projects required to obtain Land Disturbing Permit. Issuance of Civil Penalty for cost of damages of twice the cost of city expenses if City crews are required to clean up sediment discharged into City Streets, right-of-way or stormwater structures.
- (c) Third Offense-- Issuance of Civil Penalty of \$100.00 per discharge point per discharge plus salary costs of enforcement of article to land disturbance permit applicant. Damages of up to three times the cost of city expenses if City crews are required to clean up sediment discharged into City Streets, right-of-way or stormwater structures. Cease and Desist Order until necessary erosion and sedimentation controls are installed or maintained.
- (d) Each Additional Offense-- Issuance of Civil Penalty of \$500.00 per discharge point per discharge to land disturbance permit applicant. Damages of up to three times the cost of city expenses if City crews are required to clean up sediment discharged into City Streets, right-of-way or stormwater structures. Cease and Desist Order until necessary erosion and sedimentation controls are installed or maintained.
- (e) Failure to Properly Maintain Erosion Control Self Inspection Sheets and On-Site Erosion Control Plan—Issuance of Civil Penalty of \$100.00 per inspection in which self inspection sheets or up-to-date erosion control plans cannot be provided when asked by inspector.
- (f) Failure to Provide Proper Final Stabilization—Issuance of Civil Penalty of \$250.00 per day issued against Property Owner for each day past issuance date of final certificate of occupancy.

4. Failure to Comply with Approved Stormwater Design Plans

- (a) Upon Notice of Variation of Approved Plans—Written notification to Property Owner, Design Engineer, General Contractor and Land Disturbing Permit Applicant that construction does not match approved plans and that if modifications are to be made, revised plans must be submitted for review and approval.
- (b) Failure to Submit Revised Plans—Stormwater Management Inspectors cannot authorize approval for certificate of occupancy until modifications have been submitted and approved.
- (c) Failure to Implement Approved Stormwater Design Plan (Previously Occupied)
 - i. Notice of Violation and Compliance Order—A Notice of Violation and Compliance Order shall be issued to the property owner giving a maximum of thirty days to install all required stormwater infrastructure

- ii. Failure to Meet Compliance Order Dates—Issuance of Civil Penalty of \$1,000.00 per day for each day approved plans are not met.

5. Illicit Discharges (Non-residential, Non-accidental)

- (a) First Offense—Notice of Violation issued to responsible party for non-stormwater discharge.
- (b) Second Offense—Issuance of Civil Penalty against responsible party of \$1,000.00.
- (c) Each Additional Offense—Issuance of Civil Penalty against responsible party of \$2,500.
- (d) Additional damages consisting of salaries and the cost of all city crew or contracted services to clean up illicit discharge will be passed on to violator starting with the first offense. Additional damages to include other items such as loss of income for not properly using sanitary sewer system.
- (e) An Illicit discharge properly reported as Accidental Discharges as required by Section 31-343 will be reclassified as Accidental Releases and not subject to enforcement as an illicit discharge. However, the responsible party may be held liable to damages to the City.

6. Illicit Discharges (Residential Wastewater Discharge)

- (a) First Offense—Issuance of Notice of Violation and Compliance Order to stop illicit discharge within 10-days.
- (b) Failure to comply with Compliance Order—Issuance of Court Citation for Unlawful Act, Misdemeanor. An additional request should be made to Neighborhood Services asking for condemnation of the residential unit.

7. Illicit Discharges (Residential Other than Wastewater Discharge)

- (a) First Offense— Enforcement action based on individual action. Examples: Deliberate dumping of pesticide, used motor oil or other hazardous or dangerous chemical into storm drainage system would result in Issuance of Civil Penalty including damages, raking leaves into drainage system may result in written or verbal warning.

At anytime, a Show Cause Hearing may be ordered if this protocol is unclear or inadequate to address specific violations of City Ordinance Number 9942.

This protocol does not in any way deter the Stormwater Manager from entering into a Consent Order to eliminate illicit discharges in lieu of other enforcement actions.